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NOTE AND COMMENT

ADMIRALTY RULE OF "CARE AND CURE" A LIMIT OF LIABILITY.—One of the very ancient doctrines of the general maritime law is that a sailor injured in the service of the ship is entitled to care and cure at the expense of the ship, and to his wages, but nothing more in the nature of damages for negligence of the master or others of the ship's company. In the sixth article of the Rooles d'Oleron, for example, it is said,—"But if by the master's orders and commands any of the ship's company be in the service of the ship, and thereby happen to be wounded or otherwise hurt, in that case they shall be cured and provided for at the costs and charges of the said ship."—*"ils doivent être gueris et pansès sur le cout de ladite nef."* To the same effect in the older codes commonly spoken of as the Rhodian Sea Law, see Ashburner, sub-title "Mariners" and elaborate discussions in *Reed* v. *Canfield,* 1 Sumn., 195 and *City of Alexandria,* 17 Fed., 390. While this rule has been very firmly fixed in the admiralty courts, *Osceola,* 189 U. S., 158, there has been debate about its enforcement in courts of the common law. A sailor suing in the admiralty for negligence of his superior officers would fail if he had received "care and cure," *Bunker Hill,* 198 Fed., 587, while at common law he might recover damages as in an ordinary action of tort. *Thompson v. Hermann,* 47 Wis., 602. See *Kalleck v. Deering,* 161 Mass., 469; *Hedley* v. *S. S. Co.* [1894], A. C. 222.

In the recent case of *Chelentis* v. *Luckenbach S. S. Co.,* 247 U. S. 372; 62 Laws, Ed. 1171, the Supreme Court holds that the admiralty rule must pre-

vail even where the action is brought in a common-law court. The plaintiff was a fireman who received injuries on shipboard through being negligently ordered to work in an exposed situation. He sued at common law for damages. He had received due care and hospital attention and made no claim for wages. Upon these facts appearing, a verdict was directed in favor of the defendant and affirmed on error (243 Fed., 536). The Supreme Court called up the record by certiorari and affirmed. The sailor's employment is maritime and rights and liabilities arising thereunder must be measured by the maritime law; that law must be uniformly applied and only the liabilities which it imposes are cognisable in whatever courts the litigation is brought, where the cause of action is maratime in its nature and within admiralty jurisdiction. The right to "a common-law remedy where the common law is competent to give it," the saving clauses of the Judiciary Act, refers to remedies and not to rights, and a right sanctioned by a maritime law may be enforced through any appropriate remedy recognized at common law. A plaintiff, however, cannot prevent measuring a defendant's liability by the standards of the maritime law by bringing his action in a common-law court. Maritime rights must be recognized there. The result is really an application of *lex loci delicti,* and it would be an anomaly if the rights and liabilities which inhere in a maritime tort should not be enforced in common-law jurisdictions. In *Craig* v. *Continental Insurance Company,* 26 Fed., 798; 141 U. S. 638, an action at law, the Limited Liability Act was enforced under a plea of the general issue, the court taking judicial notice of its provisions as a part of the supreme law of the land. Our maritime law is coming within the view of the second paragraph of Article VI of the Constitution.

The word "cure" in the admiralty rule is not to be understood in a literal sense; it is employed in its original meaning of taking charge of, or giving attention to, rather than absolute healing (Atlantic Abb. Adm. 451). The obligation continues for at least the duration of the voyage, *Ben Flint,* 1 Abb. 126, and, on the Great Lakes, may logically be measured by the season of navigation which takes the place of the voyage, *Hercules,* Brown's Adm. 560. Neglect to comply with the rule creates a serious liability for damages against the ship for the damages sustained, *Troop,* 118 Fed., 769; the rule is inapplicable where the injury was caused by personal negligence of the owner, as where there is a breach of his positive and non-deputable duty to see that the ship is seaworthy and her equipment in safe condition at the outset of the voyage, *S. S. Co.* v. *Moss,* 245 Fed., 54; and where there is negligence on the part of the owner, contributory negligence of the injured party does not prevent recovery but is balanced by an apportionment of the damages, (*Max Morris,* 137 U. S. 1. The general doctrine of the admiralty in regard to injuries received on shipboard by members of the crew, including the master, is the result of the experience of ages and commends itself to a sound sense of fairness and justice. When the shipowner puts his ship in good order, safely equipped and supplied, he should not be held personally liable for the accidents attending her navigation over which he has no personal control. This is the spirit of the rule of limitation of liability of which this particular doctrine is really an expression. GEORGE L. CANFIELD.